Ontario

Office of the Conflict of Interest Commissioner

Annual Report
2011-2012

Office of the Conflict of Interest Commissioner

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June 30, 2012

The Honourable Harinder Takhar
Minister of Government Services
4th Floor, Suite 4320
Whitney Block
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Toronto, ON M7A 1W3

Dear Minister:

Re: Office of the Conflict of Interest Commissioner Annual Report

I am pleased to present to you the annual report of the Office of the Conflict of Interest Commissioner, for the fiscal year 2011-2012.

Yours sincerely,

The Honourable Sidney B. Linden
Commissioner

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Commissioner's Message

Following the proclamation of the *Public Service of Ontario Act, 2006* (*PSOA*), the Office of the Conflict of Interest Commissioner was established to contribute to advancing the Ontario government's commitment to a non-partisan, professional, ethical and competent public service. Relying on the principles of public service, as well as the specific rules and policies in place for public servants, our role is to raise awareness about the expected standards of conduct and to provide advice and direction on specific matters brought to our attention.

Most people would agree that it is important to promote and maintain the high ideals of public service. However, debate continues about how best to achieve this. In the area of conflict of interest, the debate often centres on the merits of specific rules as opposed to general principles. Those in favour of rules point to the value of certainty and the greater likelihood of consistency. According to this view, principles require more interpretation, which may result in a hazy spectrum of acceptable behaviour. Those in favour of abiding by principles argue that specific rules may lead to efforts to get around the rules, whereas principles are more likely to foster thoughtful consideration of one's actions, and in that way, establish a more reasonable culture in which to work.

The introduction of the *PSOA* expanded the definition of "public servant" to include appointees to specified Ontario government agency boards. These appointees are now subject to the same rules as ministry employees. This expanded definition of public servant created the potential for some long-serving appointees to find themselves in a conflict of interest situation due to the fact that activities that were once acceptable are now potentially problematic. Such situations may arise, for example, because an appointee may find him or herself subject to a higher threshold of political neutrality or because an appointee is required to consider private interests more carefully.

During almost five years as Commissioner, I have had the privilege of assisting these newly defined public servants and their ethics executives, across a broad range of government agencies, in interpreting and applying the rules. In most cases, we have been able to identify mitigation strategies to manage the situation while retaining the needed expertise within the Ontario public service. The debate about rules versus principles is likely to continue. Nevertheless, I believe that an appropriate balance will evolve by raising awareness and dealing with new conflict of interest and political activity situations as they arise.

Finally, I continue to be impressed by the overall dedication and commitment that Ontario public servants apply to their responsibilities. I am confident that, through continuing education, dialogue, and transparency, Ontario's public service will maintain the trust and confidence of the people of Ontario.

The Honourable Sidney B. Linden
Commissioner

Establishment and Governance

To provide context for the activities described in this report, this section briefly describes the establishment and governance of the Office of the Conflict of Interest Commissioner.

Legislative background

The *Public Service of Ontario Act, 2006 (PSOA)* was proclaimed in August 2007. In enacting this legislation, the government intended to strengthen the ethical and accountability framework governing the Ontario public service.

The intent of the *PSOA* is to achieve greater consistency in the application of conflict of interest and political activity rules throughout the public service. Another objective of the legislation is to clarify lines of accountability in applying these rules, thereby contributing to transparency and understanding, within and outside government, with regard to conflict of interest and political activity and related best practices.

Among other things, the *PSOA* provides for the appointment of a Conflict of Interest Commissioner.

Role of the Commissioner

Under the *PSOA* and accompanying regulations, the Commissioner has a leadership role in contributing to public servants' understanding of the conflict of interest and political activity rules and to the interpretation of those rules. The *PSOA* also explicitly assigns to the Commissioner responsibility for certain conflict of interest and political activity matters with respect to specified employees of ministries and employees and appointees of public bodies.

The Commissioner fulfills this mandate in the following ways:

- Providing clarity and guidance to the Ontario public service regarding conflict of interest and political activity matters
- Encouraging excellence and consistency within the Ontario public service in the application of the conflict of interest and political activity rules

- Raising awareness in the Ontario public service about conflict of interest and political activity matters

These goals are achieved through three main areas of activity:

- Offering advice and making decisions on conflict of interest and political activity matters involving Ontario public servants and former public servants
- Providing advice and direction to Ontario public bodies regarding the standards of ethical conduct established by the conflict of interest rules
- Developing and sharing information that provides guidance and promotes understanding regarding Ontario's conflict of interest and political activity rules

In April 2010, with the proclamation of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (*ATAGAA*), the Commissioner was also assigned responsibility for approving the ethics plans for Ontario's tribunals. The objective of these plans is to ensure that tribunal board members are familiar with the ethical requirements associated with their positions.

Principles and values

The Office of the Conflict of Interest Commissioner has established principles and values to guide its operations: integrity, administrative fairness, independence and impartiality, transparency, consistency, timeliness, and cost-effectiveness.

These principles and values are in keeping with the function of our office as an administrative tribunal that is part of the overall administrative justice system in Ontario.

Governance and accountability

The Conflict of Interest Commissioner is appointed by the Lieutenant Governor-in-Council for a fixed term. The Commissioner is accountable to the Minister of Government Services for fulfilling the mandate prescribed in the *PSOA* and is required to report to the minister annually on the activities of our office during the preceding year. However, with respect to making statutory decisions, the Commissioner is, and must be seen to be, independent and impartial.

A memorandum of understanding between the government and the Office of the Conflict of Interest Commissioner recognizes this independence and, at the same time, sets out reporting and other responsibilities related to the management, administration, and operation of the office.

Activities in this Fiscal Year

Generally speaking, the Commissioner's responsibilities can be viewed as either activities prescribed in legislation (i.e., *PSOA* and *ATAGAA*), such as acting as ethics executive for certain individuals, or as activities that are implicit in the Commissioner's role in advancing the underlying intent of the legislation. This year, our office dealt with 177 inquiries or requests. Of these, 133 related to conflicts of interest and 17 related to political activity. The remaining 27 involved inquiries about other ethical issues, some of which were beyond our jurisdiction.

The Commissioner believes that situations where conflict of interest may arise could be avoided through raising public servants' awareness of their obligations when carrying out their duties and through aiding ethics executives in carrying out their oversight responsibilities. Accordingly, the Commissioner continues to seek opportunities to advance public servants' understanding of Ontario's ethical framework. Several recent opportunities are described in this year's report.

Making decisions and offering advice on specific matters

Acting as ethics executive

The Conflict of Interest Commissioner is the ethics executive for chairs of public bodies, the Secretary of Cabinet, and other specified individuals. In this capacity, the Commissioner is responsible for providing these individuals with advice or direction on situations or activities, including political activities, that may have an impact on fulfilling their duties as public servants.

During this fiscal year, the Commissioner provided advice or direction, as ethics executive, on 40 matters involving conflict of interest or political activity.

Assisting other ethics executives, officials or offices

Like the Commissioner, other senior officials or offices within the Ontario public service have responsibilities under the *PSOA*. They may be called upon to provide advice on the

application of the conflict of interest and political activity rules, determine whether a conflict of interest exists, or determine whether a certain political activity is permitted.

To assist individuals or offices in fulfilling these responsibilities, the *PSOA* provides that they may seek the Commissioner's guidance. The ethics executive, or designated individual or office, retains responsibility for the matter in these situations. In other circumstances, an ethics executive may seek to refer a matter to the Commissioner. In accepting such a request, the Commissioner assumes the decision-making responsibility.

During this fiscal year, other ethics executives and designated individuals and offices sought the Commissioner's advice on 101 matters involving conflict of interest or political activity, and five matters were referred to the Commissioner for a determination.

Early in his mandate, the Commissioner introduced the practice of meeting with all newly appointed and reappointed chairs of public bodies. The meetings were an opportunity to orient these appointees to their responsibilities as ethics executives and to review the ways in which the Commissioner can assist them in fulfilling their responsibilities. This year, the Commissioner met with 40 newly appointed or reappointed chairs.

Near the end of this year, the Commissioner introduced group orientation for newly appointed chairs of public bodies. Group sessions have now replaced the previously offered one-on-one meetings. One of the Commissioner's aims in adopting the group approach was to advance the government's interest in establishing a community of practice among chairs in their role as ethics executives. Ontario's Integrity Commissioner is invited to participate in the group orientation sessions, which meets the further aim of introducing chairs to the Integrity Commissioner's role in Ontario's ethical framework. A third aim of adopting group sessions was to assist the Commissioner in realizing efficiencies in light of the limited resources of the office.

Considering requests to participate in political activities

The *PSOA* sets out political activity rights and restrictions for all public servants, and also makes specific provision for individuals to seek permission to participate in activities that are not otherwise permitted. Part-time appointees to certain public bodies must seek such permission from the Commissioner, as must public servants for whom the Commissioner is the ethics executive. These requests for authorization are most common during an election period.

Receiving and providing advice on public servants' financial declarations

Public servants routinely working on matters that might involve the private sector (under circumstances and definitions set out in the *PSOA*) must make a financial declaration to the Commissioner. The financial declaration discloses certain financial interests, including those of specified family members. A revised declaration is to be submitted to the Commissioner when there is a change in financial information that must be disclosed.

As part of the effort to raise public servants' awareness about the conflict of interest rules and roles and responsibilities regarding compliance, the Commissioner established the practice of meeting with each public servant who makes a declaration in order to review the declaration form and have the public servant sign it in the Commissioner's presence. The meetings also provide an opportunity to discuss, more generally, the applicable conflict of interest rules and the roles of the Commissioner and the public servants' ethics executives.

This year, the Ministry of Government Services initiated a review of the financial declaration requirement process with a view to clarifying its application and interpretation.

Providing direction and advice regarding the standards of ethical conduct

Advising on, reviewing and approving rules submitted by public bodies[1]

The conflict of interest rules that apply to public servants working in government ministries also apply to public servants appointed to or employed by public bodies. These rules are set out in Ontario Regulation 381/07 (see Appendix 3) and specify the activities that could put a public servant at risk of a conflict of interest.

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[1] The term "public bodies" means the agencies, boards, and Commissions that are subject to the *PSOA* and its regulations.

The rules are intended to be broad enough to cover most situations, but the *PSOA* allows public bodies to develop their own rules for the Commissioner's review and approval. To meet with the Commissioner's approval, proposed rules must, at a minimum, meet the degree of ethical conduct provided for in the regulation.

One of the government's objectives in formulating the regulation was to have a consistent set of rules for all public servants. Accordingly, early in his mandate, the Commissioner encouraged public bodies to rely on the regulation wherever possible. He suggested that public bodies only submit their own rules for approval if their unique mandates gave rise to increased likelihood of potential conflicts and additional rules would more thoroughly address those circumstances.

Our office continues to work with public bodies that are considering whether to continue to rely on the regulation or develop their own rules. Our office also continues to assist public bodies in implementing approved rules.

This year, with the benefit of almost five years' experience, the Commissioner introduced a revised analytical framework to improve consistency in the submission and approval of rules.

Public bodies' rules, once approved by the Commissioner, are posted on the Commissioner's website.

Identifying enhanced organizational practices

On occasion, and sometimes in the course of addressing a specific conflict of interest or political activity matter, the Commissioner may become aware of and provide advice on introducing or revising an organizational policy or practice. The Commissioner provides advice of this nature if he is of the view that the change would better align with the *PSOA* and minimize the risk that situations of concern will arise. As well, ethics executives may seek the Commissioner's advice regarding the general application of the *PSOA* in situations that may be particular to the mandates of their organizations. The following are illustrative examples:

- Physician Payment Review Board introduced conflict of interest rules to codify the Commissioner's advice on how best to mitigate the risk of conflicts stemming from the potential for situations where adjudicators wish to place their own appeals before the tribunal.

- Ontario Tourism Marketing Partnership Corporation sought advice on its business travel and product participation guidelines for employees.
- Ontario Trillium Foundation sought advice on approaches used by other government agencies, with functions similar to those of the Foundation, to inform its review of its conflict of interest policy and other governance documents.
- Ministry of the Environment sought advice on best practices or procedures for carrying out its review of third-party conflict of interest reports as required under Ontario Regulation 452/09 (Greenhouse Gas Emissions Reporting).

The Commissioner is also required to review and approve adjudicative tribunals' ethics plans, in accordance with *ATAGAA*. This year, the Commissioner reviewed and approved the ethics plans of 10 tribunals.

Developing and sharing information

Contributing to general understanding of the legislative framework and rules

The introduction of the *PSOA* established a broader definition of "public servant". A result of the broader definition is that in-service and post-service restrictions on certain activities are applicable not only to ministry employees, but also to appointees and employees of certain government agencies that are defined as public bodies.

In the following ways, the Commissioner assists public servants, particularly those in public bodies, in understanding the specified roles, responsibilities, rules, and restrictions set out in the *PSOA*:

- Orients all newly appointed or reappointed chairs of public bodies through a letter of introduction, followed by the chairs' participation in a group orientation session
- Makes presentations to chairs of public bodies, their boards of directors, and/or senior management, on the Commissioner's and ethics executives' respective roles and on how the conflict of interest and political activity rules and restrictions apply to employees and appointees in public bodies

- Makes presentations to other groups of public servants (such as ministries' legal counsel and deputy ministers and their executive assistants) who have a common interest in the application or interpretation of the *PSOA*

The Commissioner continues to build a body of clear and readily accessible information to raise awareness and understanding of the *PSOA*. The following materials were developed this year:

- Three additional overview brochures: (i) conflict of interest rules; (ii) political activity rules; and (iii) role of ethics executives (see Appendix 4)
- Diagram of roles and responsibilities under the *PSOA* to show where the Commissioner fits within the Ontario government's larger ethical landscape (see Appendix 5)
- Consolidated procedure summary, including the processes for both conflict of interest and political activity matters (see Appendix 6)
- One-page information sheet summarizing the post-service rules (see Appendix 7)

With the benefit of almost five years' experience and over 500 matters considered to date, the Commissioner is in a unique position to advise the government regarding provisions of the *PSOA* that may require clarification or modification to improve consistency in interpretation or application.

On occasion, the Commissioner is also asked for his views on government-wide initiatives designed to meet its more general objective of raising public servants' awareness of Ontario's ethical framework. This year, the Commissioner contributed to a number of government-wide reviews of relevant procedures and practices, such as those related to seeking post-service advice and making financial declarations.

Acquiring and sharing an expanding body of knowledge

As in previous years, this annual report includes a selection of summaries of the conflict of interest and political activity cases addressed during the year. Faced with similar issues, public service decision-makers can refer to the case summaries to assist them in interpreting and applying conflict of interest and political activity rules in a consistent manner. Access to this information also contributes to public confidence in the standards of conduct within the Ontario public service.

The Commissioner continues to explore and offer ways in which ethics executives can share information about the disposition of common or emerging issues while complying with the rules intended to protect privacy and confidentiality.

This year, the Commissioner launched an initiative, still in an early phase, to encourage interested ethics executives to share summaries of their advice or determinations if they believe it would assist other ethics executives. The objectives are to promote consistency in the application and interpretation of the conflict of interest and political activity rules, broaden the collective learning of these decision-makers, and advance the government's interest in establishing a community of practice in the area of conflict of interest. The Commissioner has offered to serve as the conduit for making the summaries available to other ethics executives.

Identifying and sharing best practices

The Commissioner makes it a priority to learn from other jurisdictions that have comparable responsibilities, with a view to adopting methods, tools, or approaches that may be well suited to Ontario's legislative framework. The Commissioner also welcomes opportunities to share information about Ontario's high standard of ethical conduct for public servants and its framework for maintaining that standard.

Council on Governmental Ethics Laws (COGEL)

The Office of the Conflict of Interest Commissioner is an active participant in COGEL, an international organization that facilitates the exchange of information on developments and trends in government ethics and best practices in ethics administration. A representative of this office attended this year's conference, along with over 400 other ethics professionals. Throughout the year, participation on COGEL's electronic bulletin board provides a valuable perspective on improving or introducing best practices.

Municipal Conflict of Interest Framework

The recent public inquiry into certain transactions involving the City of Mississauga's mayor was likely to raise issues that could be relevant to the application of the conflict of interest rules under the *PSOA*. For that reason, the Commissioner closely followed the issues and analysis arising from the inquiry.

The findings of the inquiry included recommendations affecting the municipal conflict of interest framework. The Commissioner has offered to be a resource for

the Ministry of Municipal Affairs and Housing in its response to those recommendations.

Chinese State-Owned Assets Supervision and Administration Delegation

The Commissioner met with a delegation of Chinese government officials to provide an overview of Ontario's ethical framework and to describe the Commissioner's role, responsibilities, and approaches to promoting ethical conduct in the Ontario public service.

Building organizational capacity

The Commissioner has devoted considerable attention to defining the scope of his responsibilities and to developing the procedures and tools for carrying out those responsibilities. The procedures and tools are continually assessed in light of accumulated experience and practical application. Ongoing review helps ensure that our office continues to serve as a useful resource for Ontario public servants and others. Advancing the internal knowledge, infrastructure, and organizational capacity of our office also assists the Commissioner in carrying out his mandate effectively.

Meetings with subject matter experts

Our office occasionally arranges opportunities to meet with and learn from subject matter experts who provide valuable insight or training on topics relevant to the Commissioner's mandate.

This year, with a view to gaining additional insight into the municipal conflict of interest and ethics framework, our office staff met with one such expert who had participated on a panel advising the Mississauga Inquiry and has extensive experience in the area of ethics in the public sector.

Measuring the success of the COIC office

This year, our office began to explore ways in which organizations with similar mandates measure their success in meeting their objectives.

The office has also begun to look at how to measure traffic on our recently redesigned website with a view to measuring the site's effectiveness.

Performance Targets

For the purpose of service performance targets, the "customers" of our office are primarily public servants for whom the Commissioner is the ethics executive and individuals and offices assigned to the Commissioner in his advisory or decision-making role. Occasionally, matters are brought to the Commissioner's attention by someone outside the public service.

Accordingly, our office is required to adhere to the Ontario government's customer service standards for timeliness and continues to make every effort to meet or exceed them. The recently introduced electronic case management system has simplified the process of reviewing and reporting on success in meeting these targets. Additional service standards, adopted by our office last year, ensure compliance with government-wide customer service standards for accessibility.

The Commissioner acknowledges inquiries concerning the Ontario public service within five days. Within a further five days, the Commissioner strives to either provide a response or request additional information in order to provide a response. When additional information is requested, the Commissioner aims to provide a response within 10 days of receiving the information. In the case of inquiries where the matter does not concern the Ontario public service, the Commissioner replies within five business days.

This year, our office had a 97 per cent success rate in meeting or exceeding these performance standards. Once again, our office has received many indications of appreciation for prompt and helpful responses to inquiries.

A procedure for submitting formal complaints about service was established during the first year of operation. As in previous years, this fiscal year no complaints were lodged about service, either formally or informally.

Illustrative Case Summaries

The following case summaries are examples of the types of inquiries or requests the commissioner addressed this year. These summaries are intended to assist Ontario public servants and decision-makers in interpreting the conflict of interest and political activity rules and applying the rules to similar situations. Each summary indicates whether the commissioner's role in the matter was to provide advice or to make a determination.

1. Conflict of Interest Advice (O. Reg. 381/07, ss. 4)

The Commissioner's advice was sought as to whether it would be appropriate for a class of senior public servants to attend a fundraising dinner as guests of a key government stakeholder or whether they should be required to pay the full price of a ticket. These senior public servants were likely to be regarded as key participants in the event, and it was to provide a valuable opportunity for dialogue and relationship-building.

The Commissioner was of the view that it would be inappropriate for the senior public servants in question to attend the function as guests of the stakeholder. It could be perceived that the key government stakeholder was providing the class of senior public servants with a gift, of greater than nominal value, in the hope of doing business with the Crown, and this would be contrary to section 4 (accepting gifts) of the regulation. A further issue was the fact that the event was a fundraiser and a portion of the ticket price would go to the stakeholder. The Commissioner's advice was that public funds should not be used towards the fundraising efforts of a government stakeholder. In order to mitigate the risk of conflicts, the Commissioner suggested that, rather than purchase tickets at the full price, the public servants determine the per-person cost of the dinner, and each public servant pay only that portion of the price of a ticket. Thus, the public servants would neither attend at the expense of the stakeholder nor contribute to the fundraising. The public servants were advised to then request reimbursement for the paid portion in accordance with government directives that are in place for out-of-pocket expenditures. This procedure would ensure openness and transparency with regard to the expenditure of public funds.

2. Conflict of Interest Advice (O. Reg. 381/07, ss. 3, 5, 6, 8 & 9)

An ethics executive sought advice as to whether a senior public servant may join the board of a non-governmental organization (NGO) outside of Canada.

The Commissioner assessed the potential for conflicts of interest by considering the interactions between the duties of the public servant and the proposed role in the NGO. The Commissioner determined that although the NGO had no current dealings with Ontario, there was some possibility of a future connection with Canada or Ontario and the public servant's role as a decision-maker. In addition, the NGO could ask the public servant to comment on related policies or issues before the Ontario government. The Commissioner suggested that, to mitigate the risk of conflicts, the public servant recuse him/herself from discussions and decision-making, in his/her capacity as a senior public servant, where the issue involved the NGO. This measure should apply not only to the NGO itself, but also to issues related to the business of the NGO. The Commissioner also recommended that, should the NGO board discuss matters relating to Ontario, the public servant should recuse him/herself from those discussions and decisions. The Commissioner further suggested that the public servant disclose the mitigation strategy to his/her colleagues to make them aware of what can and cannot be brought to the public servant's attention.

3. Conflict of Interest Determination (O. Reg. 381/07, ss. 3, 5, 6, 7 & 9)

A public servant sought a determination regarding the potential for conflict of interest where the public servant's spouse works in the same organization.

The public servant was not the spouse's supervisor, but was the head of the organization and was the ethics executive. The Commissioner determined that there was potential for conflict of interest. The Commissioner was advised that transparent measures had already been put in place to mitigate the risk. The public servant's work-related duties relating to his/her spouse had been delegated to another official in the organization, and the public servant's access to employment-related information about his/her spouse was limited. The public servant had not been precluded from participating in discussion or decision-making with respect to the following:

i. Work issues and products, as required in the ordinary course of the public servant's duties, where the public servant's spouse may have contributed to or may have been responsible for the matter;

ii. Information of a statistical or general nature, provided for information purposes, where it involved the public servant's spouse but was not specific to him/her; and

iii. Matters that could potentially affect the public servant's spouse, but only where the matters would affect a broad class of public servants.

The Commissioner took into account that a large class of individuals would most likely be affected by such involvement, making it unlikely that any benefit or preferential treatment would flow to his/her spouse. However, the Commissioner cautioned the public servant to remain mindful of the size of the class of individuals affected by specific decisions. The Commissioner suggested that the public servant refrain from participating in discussions or decisions where the matter affected a smaller class of individuals that included his/her spouse.

4. Conflict of Interest Determination (O. Reg. 381/07, ss. 6)

The president and CEO of a public body sought a determination as to whether any conflict of interest concerns arose from his/her spouse's affiliation with an organization that provided services to that public body.

The public servant was not involved in the decision to select the spouse's organization as a service provider, and the spouse was not involved in providing services to the public body. However, the Commissioner determined that the public servant's participation in discussions or decision-making related to the services provided by the organization could engage the conflict of interest rules. For example, the public servant's participation in decision-making regarding that organization could create the appearance of preferential treatment. To minimize the risks, the Commissioner required the public servant to disclose his/her spouse's affiliation with the organization prior to any discussion or decision-making by the public body related to the services provided by the organization, and depending on the nature of the matter, recuse him/herself from the discussion and decision-making process.

5. Conflict of Interest Determination (O. Reg. 381/07, ss. 3, 5, 6 & 8)

At a board meeting, the chair of a public body declared a conflict of interest regarding an issue under consideration and recused him/herself from the discussion and decision-making process. Subsequently, individuals with an interest in the issue contacted the chair and the chair discussed the issue with them. This raised concerns and the Commissioner was asked to make a determination.

The Commissioner determined that the chair's conduct in discussing the issue with interested individuals, outside the board meeting, contravened the conflict of interest rules. The chair had not disclosed any confidential information, but the Commissioner was of the view that, once the chair had declared a conflict of interest, participating in such discussions created the appearance that preferential treatment was being given to those individuals.

To minimize the risk of future contraventions of the conflict of interest rules, the Commissioner recommended that, where the chair has declared a conflict of interest in a matter, he/she limit interaction, outside of board meetings, with individuals connected to that matter. The Commissioner suggested that the chair advise such individuals that he/she cannot provide any assistance or engage in discussions with them regarding the matter after declaring a conflict of interest at the board meeting.

6. Conflict of Interest Determination (O. Reg. 381/07, ss. 3, 5, 6, 8 & 9)

The president and CEO of a public body sought a determination as to whether he/she could accept a temporary assignment, in a senior leadership position, with an independent, not-for-profit organization. The public servant wished to return to the public body role following the temporary assignment. The organization's mandate affected the sector of the public body, and it received funding from the ministry that has oversight responsibility for the public body.

The Commissioner noted that when public servants are on temporary assignment, they continue to be subject to the in-service conflict of interest rules. As the not-for-profit organization had only recently been established, and its relationship with the public body was still being developed, the Commissioner acknowledged that it was not possible to anticipate all of the potential intersections between the public body and the organization. However, since the organization and the public body operated in the same sector, the Commissioner concluded that some activities may be expected to intersect. For example, the possibility existed that the public servant would interact with the same ministry staff in both the temporary and the public body roles. The Commissioner determined that such interactions could create the risk of conflicts of interest.

To minimize the risk, the Commissioner imposed restrictions on the public servant's activities. The public servant was to refrain from lobbying or soliciting the Crown, including the public body, on behalf of the organization, and recuse him/herself from discussion or decision-making where there was potential for intersection between the two roles. The Commissioner required the public servant to keep the ministry and the

Commissioner informed of any duties or responsibilities undertaken during the temporary assignment if those activities could give rise to potential conflicts of interest.

7. Conflict of Interest Determination (O. Reg. 381/07, ss. 5, 6, 8 & 9)

The CEO of a public body sought a determination as to whether he/she could teach and develop the curriculum for a specific program at an Ontario university.

There was some potential for interactions between the university and the public body, and it was possible that the public servant could be called upon to provide assistance to the university with issues related to his/her role as a public servant. It was also possible that he/she could interact with the same stakeholders in both roles. In light of these possible intersections, the Commissioner determined that there was some potential for conflicts between the two roles. The public servant would be required to abide by the following conditions while teaching and developing a curriculum for the university:

i. The public servant would ensure that he/she did not disclose or use, in the course of the university work, any confidential information obtained while a public servant;

ii. Individuals and groups associated with the university work would not receive, and were made aware that they could not receive, any assistance or information from the public servant beyond that which he/she would provide in the ordinary course of carrying out his/her responsibilities as a public servant;

iii. The public servant would recuse him/herself from all discussions and decision-making in matters where there is an intersection between the university and the public body or the Crown, including matters where the university is lobbying or taking a position inconsistent with that of the public body or the Crown;

iv. The public servant would not participate in fundraising activities directed at the public body or the Crown; and

v. The public servant would recuse him/herself from any decision-making as a public servant if the decision could result in a benefit to the university.

8. Conflict of Interest Determination (O. Reg. 381/07, ss. 6)

The chair of a public body sought a determination as to whether it would be appropriate for him/her to speak at an event hosted by a particular foundation. The foundation's mission was to raise, manage and distribute funds solely for an organization that received funding from the public body.

Although no funds were to be solicited at the event directly, the purpose of the event was to generate support for the foundation's subsequent fundraising efforts. The funds to be raised would support the organization funded by the public body. A reasonable person might conclude that the chair's attendance at the event as a keynote speaker was an endorsement of the foundation and the organization that would benefit from the foundation's subsequent fundraising initiative. In turn, this could create the appearance that the public body was giving preferential treatment to the organization affiliated with the foundation. Accordingly, the Commissioner determined that it would not be appropriate for the chair to accept this invitation to speak.

9. Conflict of Interest Determination (O. Reg. 381/07, ss. 3, 5, 6, 8 & 9)

The part-time chair of a public body sought a determination as to whether his/her private company was permitted to respond to a Request for Proposal (RFP) issued by the ministry that has oversight for the public body.

If the company proved to be the successful proponent, the public servant would likely be the project manager for the work. The Commissioner considered the potential for conflicts (1) during the RFP process and (2) in the event that the company became the successful proponent.

There was some potential for intersections between the public servant's role with the public body and his/her company during the RFP evaluation process. Such interactions could lead to conflicts. However, the RFP did not stem from any past work of the public body, and the public servant would not be involved in the RFP evaluation process. The Commissioner concluded that it was unlikely that the public servant could use his/her position with the public body to the advantage of his/her company during the RFP process. Accordingly, the Commissioner determined that the company was permitted to respond to the RFP, provided that the public servant continued to comply with the obligations set out under sections 5 (disclosing confidential information) and 6 (giving preferential treatment) of the conflict of interest rules.

In the event that the company became the successful proponent, there was a greater risk of conflict of interest arising from interactions between the public servant's role and his/her proposed role as project manager. For example, the public servant's interactions with ministry staff or experts could lead to a benefit to the private company by way of additional business/consulting opportunities. It is also possible that the company's work under the RFP could intersect with future, and as yet unknown, work of the public body. The Commissioner determined that, if the company was the successful proponent, the

conflict of interest rules would prohibit the public servant from working as the project manager and as a public servant at the same time.

10. Conflict of Interest Determination (O. Reg. 381/07, ss. 3, 5, 6, 8 & 9)

The chair of an adjudicative public body was entitled to receive certain payments from a former employer for a period of twelve months. The former employer routinely represented clients before the public body. The chair sought a determination as to whether the payment arrangement raised any conflict of interest concerns.

Conflict of interest concerns can arise when the government interacts with a public servant's former employer or business associate. These concerns are heightened when a public servant has an ongoing financial relationship with the former employer. A member of the public may conclude that the public servant has an interest in preserving the financial interests of the former employer. In this instance, the payments to the chair were not contingent on the chair's providing any ongoing services to the former employer. However, the payments were dependent on the continued viability of the former employer's business. In light of this, the Commissioner determined that the ongoing payment arrangement created a potential for conflicts of interest.

The Commissioner suggested that the chair sever the ongoing financial relationship with the former employer to mitigate the potential for conflicts. Ultimately, the chair and former employer chose to restructure the financial arrangement as a one-time payment.

In addition, the chair agreed to recuse him/herself from any matters involving the former employer or its clients during the next 12-month period. Following this period, depending on the circumstances, the chair would be required to recuse him/herself from specific matters involving the former employer or its clients.

The Commissioner also reminded the chair to ensure that persons or entities with whom he/she had interacted in the past neither received, nor appeared to receive, preferential treatment.

11. Conflict of Interest Determination (O. Reg. 381/07, Part II)

A soon-to-be former public servant employed in a public body sought a determination as to whether he/she would be permitted to engage in the following post-service activities:

i. Pursuing consulting contracts with the Province of Ontario, as either a vendor of record (VOR) or as a bidder in response to competitive procurements; and

ii. Assisting persons or entities on matters within the mandate of the public body.

A former public servant is subject to the post-service conflict of interest rules set out in Part II of the regulation. As the individual was not in a senior designated position, the conflict of interest rules did not prohibit the specified post-service activities. However, in this case, certain restrictions, usually reserved for public servants in senior designated positions, should apply. The Commissioner advised that the former public servant was prohibited from seeking preferential treatment from or privileged access to current public servants, and from disclosing or using any confidential information obtained in the course of his/her public service duties. To further minimize the risk of using or disclosing confidential information, the Commissioner directed the public servant to refrain from advising or assisting any person or entity, other than public body or the Crown, in connection with any specific government initiative or project with which he/she had been involved as a public servant. This restriction would apply for a period of one year. In addition, he/she was restricted from advising or otherwise assisting any entity in connection with any proceeding, negotiation, or other transaction (such as requests for proposals or requests for services) if he/she had previously advised the public body or the Crown on the same matter.

The same individual returned to seek a determination on whether he/she would be permitted to assist the successful proponent of a request for proposals (RFP) issued by the public body where the individual had been a public servant.

The Commissioner first assessed whether the RFP was for a project with which the individual had assisted the public body while still a public servant, and whether the RFP was still open. The contract stemming from the RFP had yet to be signed, and therefore the RFP was still in process. Given the restrictions previously placed on the former public servant, and the fact that the RFP process was ongoing, the Commissioner was of the view that it would be inappropriate for the former public servant to assist the successful proponent until both of two events occurred:

i. The contract stemming from the RFP was signed, effectively ending the RFP process; and

ii. The one-year restriction imposed on the former public servant expired.

12. Conflict of Interest Determination (O. Reg. 381/07, ss. 20)

A former public servant had advised the Crown on a certain project while still employed by a public body. The ethics executive of the public body sought a determination as to

whether the former public servant's involvement in a seemingly similar project involving the public body, on behalf of his/her new employer, would contravene the post-service conflict of interest rules. The former public servant indicated that the project in question had replaced the earlier project on which he/she had advised the Crown while still a public servant.

The Commissioner had previously provided advice to the former public servant about the application of the conflict of interests rules to his/her post-service activities. Under these rules, the former public servant was prohibited from assisting any entity in connection with "any particular proceeding, negotiation or other transaction" if he/she had advised the Crown in the matter. To assess whether the project in question was the same as the original project with which he/she had assisted the Crown, the Commissioner considered both projects in terms of name, purpose, scope, and the role of the public body. The Commissioner found that the original project was much larger in scope and involved a more defined role for the public body. Accordingly, he concluded that although there were some similarities, the projects were different. The Commissioner therefore determined that the former public servant's involvement on behalf of the new employer would not contravene the conflict of interest rules, but the former public servant continued to be subject to the post service restrictions on seeking preferential treatment from current public servants and on using or disclosing confidential information obtained while a public servant.

13. Conflict of Interest Determination (O. Reg. 381/07, Part II)

The former chair of a public body sought a determination as to whether he/she could co-chair an expert panel that would report to the minister with oversight for the former public servant's public body. The stated objectives of the panel included the following:

i. Broaden the dialogue beyond the role of the government to include all the sectors with a role to play;

ii. Provide the minister with a set of prioritized, sector-specific and evidence-based recommendations, that build on stakeholders' and partners' new and existing initiatives and strategies; and

iii. Invest key leaders from various sectors in the success of the strategy and achievement of the advice of the panel.

As a former public servant who had been employed in a senior designated position, the individual was subject to the post-service conflict of interest rules set out in part II of the regulation, including section 18, which places a restriction on lobbying. The Commissioner determined that the former public servant was not prohibited from

serving as co-chair of the expert panel, but certain restrictions would apply. In particular, the former public servant was prohibited from lobbying certain public servants for 12 months after leaving the public body. He/she was also prohibited from seeking preferential treatment from or privileged access to current public servants and from disclosing or using any confidential information obtained while a public servant.

14. Political Activity Advice (*PSOA* ss. 72 & 89)

The chair of a public body sought advice as to whether a specially restricted public servant was permitted to make certain specific comments to the media during a provincial election. The comments did not explicitly identify a candidate or political party, but expressed disapproval of the language used by politicians of a political party during the provincial election.

In assessing whether this activity constituted "political activity", the Commissioner considered how a reasonably well-informed member of the public might view the activity. The comments in question could be considered political activity if they indicated support of or opposition to a political party, or if they could be related to the public servant's duties. The comments criticized the language used by candidates of a political party rather than the position taken by a particular political party, but this distinction might not be apparent to a member of the public. The comments included the opinion that the language used by politicians had an effect on a subject matter dealt with by the public body. In this way, the comments came close to connecting the public servant's duties with the policies and positions of a political party. However, since the comments did not explicitly identify a candidate or a political party, the Commissioner concluded that it was unlikely that, taken by themselves, the comments would constitute political activity. Nevertheless, the Commissioner recommended that the public servant be cautioned that, given the public body's unique interaction with members of the public, such comments might cause a member of the public to question the political neutrality of the public servant and/or the public body.

15. Political Activity Advice (*PSOA*, ss. 72 & 89)

An ethics executive sought advice about what limitations, if any, should be placed on a public servant who wished to (1) campaign for a candidate, or (2) work in the central campaign office for a political party. These activities were to take place during the public servant's vacation.

The proposed activities demonstrate support for a candidate or political party and are therefore considered "political activity". The individual was not a specially restricted public servant. As such, the public servant is permitted to engage in any form of political activity that is not specifically prohibited or restricted. Activities may be restricted on the basis that they could (1) interfere with performance of the public servant's duties, or (2) conflict with the interests of the Crown. The Commissioner considered the nature of the public servant's duties and the nature of the contemplated political activity. The public servant had only limited influence over other public servants and was not involved in decision-making. Furthermore, participation in either activity would not prevent the public servant from resuming his/her duties with the Crown. The Commissioner concluded that the public servant would not be prohibited from engaging in either of the activities while on vacation.

The Commissioner reminded the ethics executive that the public servant continued to be subject to both the political activity restrictions and conflict of interest rules set out in the *PSOA* while on vacation. The Commissioner also cautioned that the public servant should maintain a distinction between his/her role as public servant and his/her work on the campaign. More specifically, the public servant should not engage in the following:

i. Soliciting funds, including accepting funds while campaigning door to door;

ii. Commenting publicly on the position or policy of a party or candidate as directly related to his/her public service duties;

iii. Using government resources for political activity purposes, including premises, equipment, supplies or documents in his/her possession;

iv. Associating his/her public service position with the political activity;

v. Using his/her employment as a public servant to benefit personally;

vi. Using or disclosing any confidential information obtained through his/her public servant role; and

vii. Offering assistance in their dealings with the provincial government to any persons or entities connected to the campaign, or creating the appearance of any form of preferential treatment.

16. Political Activity Authorization (*PSOA*, ss. 89 & 90)

A specially restricted public servant appointed to an adjudicative agency sought authorization to perform the following functions, for two candidates, during a federal election period:

i. Door-to-door canvassing;

ii. Speaking to voters on the telephone;

iii. Fundraising; and

iv. Working on administrative matters in the campaign office.

These activities fall outside the forms of political activity permissible for specially restricted public servants under sections 89 and 90 of the *PSOA*. In some situations, the Commissioner may authorize specially restricted public servants to engage in political activity not otherwise permitted. Section 92(5) of the *PSOA* sets out the criteria for the Commissioner to consider when reviewing requests for such authorization. The political activity rules are intended to balance the neutrality of the public service with a public servant's ability to engage in political activity.

The Commissioner granted authorization to the public servant to work on administrative matters in a campaign office and to speak to voters on the phone on behalf of the candidates, provided that the public servant did not identify him/herself or engage in the prohibited forms of political activity set out in section 88 of the *PSOA*. In granting authorization to engage in these political activities, the Commissioner took into account the nature of the activities; the scope of discretion available to members of the adjudicative agency; and the jurisdiction of the agency.

The Commissioner did not authorize the public servant to engage in door-to-door canvassing or fundraising. The in-person interactions might enable members of the public to identify the public servant and conclude that he/she supported a particular party.

17. Political Activity Advice (*PSOA*, ss. 72 and 89)

The chair of a public body sought advice from the Commissioner as to whether the comments a specially restricted public servant made to the media via a letter to the editor of a newspaper might be considered a contravention of the political activity rules. The comments related to a federal government policy concerning a specific sector.

In assessing whether this activity constituted "political activity", the Commissioner considered how a reasonably well-informed member of the public might view the activity. The Commissioner noted that while the comments did not explicitly discuss a substantive position taken by any federal government party, they did concern a sector affected by the mandate of the public body. The comments were also related to the decision-making duties of the public servant. However, the comments did not explicitly reflect the position of a specific political party. The Commissioner concluded that it was

unlikely that, taken by themselves, the comments would constitute political activity. Nevertheless, the Commissioner recommended that the public servant be cautioned that, given the decision-making responsibilities of the public body and the public servant, such comments may cause members of the public to question the political neutrality of the public body and/or the public service in general.

APPENDICES

1. Appointees

In accordance with the memorandum of understanding, the annual report is to include "the name of any appointees including when each was first appointed and when the current term of each appointment expires."

APPOINTEE	EFFECTIVE DATE OF APPOINTMENT	END OF TERM
Justice Sidney B. Linden	July 30, 2007	July 30, 2012

FINANCIAL INFORMATION FOR FISCAL YEAR 2010-11

Standard Account	2010-2011* Appropriations	Actual Expenditures
Salaries and Wages	598,200	559,615
Employee Benefits	48,200	49,892
Transportation and Communication	15,200	12,607
Services	247,400	269,446
Supplies and Equipment	6,600	4,963
Subtotal:	$ 915,600	$ 896,522
Variance		19,078
TOTAL	$ 915,600	$ 915,600

* Represents 10-11 printed estimates and in-year approvals

FINANCIAL INFORMATION FOR FISCAL YEAR 2011-12

Standard Account	2011-2012** Appropriations	Actual Expenditures
Salaries and Wages	590,200	580,849
Employee Benefits	46,700	48,704
Transportation and Communication	10,700	10,321
Services	290,800	294,172
Supplies and Equipment	5,900	5,503
Subtotal:	$ 944,300	$ 939,548
Variance		4,752
TOTAL	$ 944,300	$ 944,300

** Represents 11-12 printed estimates and in-year approvals

Note: Statement of financial information prepared by Business Planning and Financial Management Branch.

ONTARIO REGULATION 381/07

made under the

PUBLIC SERVICE OF ONTARIO ACT, 2006

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CONFLICT OF INTEREST RULES FOR PUBLIC SERVANTS (MINISTRY) AND FORMER PUBLIC SERVANTS (MINISTRY)

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PART I
RULES FOR PUBLIC SERVANTS WHO WORK IN A MINISTRY

INTERPRETATION

Definitions

1. In this Part,

"confidential information" means information that is not available to the public and that, if disclosed, could result in harm to the Crown or could give the person to whom it is disclosed an advantage;

"gift" includes a benefit of any kind;

"spouse" means,

(a) a spouse as defined in section 1 of the *Family Law Act*, or

(b) either of two persons who live together in a conjugal relationship outside marriage.

Application

2. This Part applies to every public servant who works in a ministry.

PROHIBITED CONDUCT

Benefiting self, spouse or children

3. (1) A public servant shall not use or attempt to use his or her employment by the Crown to directly or indirectly benefit himself or herself or his or her spouse or children.

(2) A public servant shall not allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the Crown.

Accepting gifts

4. (1) A public servant shall not accept a gift from any of the following persons or entities if a reasonable person might conclude that the gift could influence the public servant when performing his or her duties to the Crown:

1. A person, group or entity that has dealings with the Crown.

2. A person, group or entity to whom the public servant provides services in the course of his or her duties to the Crown.

3. A person, group or entity that seeks to do business with the Crown.

(2) Subsection (1) shall not operate to prevent a public servant from accepting a gift of nominal value given as an expression of courtesy or hospitality if doing so is reasonable in the circumstances.

(3) A public servant who receives a gift in the circumstances described in subsection (1) shall notify his or her ethics executive.

Disclosing confidential information

5. (1) A public servant shall not disclose confidential information obtained during the course of his or her employment by the Crown to a person or entity unless the public servant is authorized to do so by law or by the Crown.

(2) A public servant shall not use confidential information in a business or undertaking outside his or her work for the Crown.

(3) A public servant shall not accept a gift directly or indirectly in exchange for disclosing confidential information.

Giving preferential treatment

6. (1) When performing his or her duties to the Crown, a public servant shall not give preferential treatment to any person or entity, including a person or entity in which the public servant or a member of his or her family or a friend has an interest.

(2) When performing his or her duties to the Crown, a public servant shall endeavour to avoid creating the appearance that preferential treatment is being given to a person or entity that could benefit from it.

(3) A public servant shall not offer assistance to a person or entity in dealing with the Crown other than assistance given in the ordinary course of the public servant's employment.

Hiring family members

7. (1) A public servant shall not, on behalf of the Crown, hire his or her spouse, child, parent or sibling.

(2) A public servant shall not, on behalf of the Crown, enter into a contract with his or her spouse, child, parent or sibling or with a person or entity in which any of them has a substantial interest.

(3) A public servant who hires a person on behalf of the Crown shall ensure that the person does not report to, or supervise the work of, the person's spouse, child, parent or sibling.

(4) A public servant who reports to, or supervises the work of, his or her spouse, child, parent or sibling shall notify his or her ethics executive.

Engaging in business, etc.

8. A public servant shall not become employed by or engage in a business or undertaking outside his or her employment by the Crown in any of the following circumstances:

1. If the public servant's private interests in connection with the employment or undertaking could conflict with his or her duties to the Crown.

2. If the employment or undertaking would interfere with the public servant's ability to perform his or her duties to the Crown.

3. If the employment is in a professional capacity and is likely to influence or detrimentally affect the public servant's ability to perform his or her duties to the Crown.

4. If the employment would constitute full-time employment for another person. However, this paragraph does not apply with respect to a public servant who is employed part-time by the Crown. This paragraph also does not apply with respect to a public servant who is on an authorized leave of absence from his or her position, but only if the employment is not contrary to or inconsistent with the terms of the leave of absence.

5. If, in connection with the employment or undertaking, any person would derive an advantage from the public servant's employment as a public servant.

6. If government premises, equipment or supplies are used in the employment or undertaking.

Participating in decision-making

9. (1) A public servant shall not participate in decision-making by the Crown with respect to a matter that the public servant is able to influence in the course of his or her duties if the public servant could benefit from the decision.

(2) Subsection (1) does not apply if the public servant obtains the prior approval of his or her ethics executive to participate in decision-making by the Crown with respect to the matter.

(3) A public servant who, in the course of his or her employment in a ministry, is a member of a body or group shall not participate in, or attempt to influence, decision-making by the body or group with respect to a matter if the public servant could benefit from the decision or if, as a result of the decision, the interests of the body or group could conflict with the interests of the Crown.

(4) A public servant described in subsection (3) shall inform the body or group if the circumstances described in that subsection exist.

Interpretation

10. (1) Sections 11 and 12 apply to every public servant who works in a ministry, who routinely works on one or more matters that might involve the private sector and who has access to confidential information about the matter obtained during the course of his or her employment by the Crown.

(2) In this section and in sections 11 and 12,

"matter that might involve the private sector" means a matter,

(a) that relates to services currently provided under a program of the Crown or by a public body, an agency of the Crown or a corporation controlled by the Crown with respect to which it is possible that a private sector entity will provide all or part of the financing for the services or will provide some or all of the services, and

(b) that has been referred to a ministry, a public body or an agency of the Crown by the Executive Council or a member of the Executive Council for review or implementation.

Duty to declare certain financial interests

11. (1) When a public servant described in subsection 10 (1) begins work on a matter that might involve the private sector, he or she shall make a declaration to the Conflict of Interest Commissioner in which the public servant discloses the following matters respecting his or her financial interests:

1. A legal or beneficial interest of the public servant in securities or derivatives of corporations or governments, other than the Government of Ontario.
2. A legal or beneficial interest of the public servant in a business entity or a commercial operation or in the assets of such an entity or operation.
3. A legal or beneficial interest of the public servant in real property.
4. A legal or beneficial interest of the public servant in a mutual fund that is operated as an investment club where,

i. its shares or units are held by not more than 50 persons and its indebtedness has never been offered to the public,

ii. it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and

iii. all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations.

(2) Despite subsection (1), the public servant is not required to disclose his or her legal or beneficial interest in any of the following:

1. A mutual fund within the meaning of subsection 1 (1) of the *Securities Act* other than a mutual fund described in paragraph 4 of subsection (1) of this Regulation.
2. Fixed-value securities issued or guaranteed by a government or a government agency.
3. A guaranteed investment certificate or similar financial instrument issued by a financial institution entitled by law to issue such instruments.
4. A registered pension plan, an employee benefit plan, an annuity or life insurance policy or a deferred profit sharing plan.
5. Real property that the public servant, or a member of his or her family, uses primarily as a residence or for recreational purposes.

(3) The public servant shall disclose the information required by subsection (1), with necessary modifications, in respect of his or her spouse and dependent children, but only to the extent that the legal or beneficial interests of the spouse or a child could create a conflict of interest.

(4) For the purpose of subsection (3), the public servant shall make reasonable efforts to obtain information about the financial interests described in subsection (1) of his or her spouse and dependent children.

(5) The public servant shall give the Conflict of Interest Commissioner a revised declaration whenever there is a change in any of the information required to be disclosed.

Prohibition on certain purchases

12. (1) A public servant described in subsection 10 (1) shall not purchase, or cause another person to purchase on his or her behalf, a legal or beneficial interest in an entity that is carrying on, or proposes to carry on, an activity relating to a matter that might involve the private sector.

(2) Despite subsection (1), a public servant may purchase an interest in a mutual fund (within the meaning of subsection 1 (1) of the *Securities Act*) that includes securities of a person or entity described in subsection (1) but not an interest in a mutual fund described in paragraph 4 of subsection 11 (1) of this Regulation that includes such securities.

(3) The prohibition described in subsection (1) ceases to have effect with respect to the matter,

(a) six months after the date on which the action in respect of the matter is completed; or

(b) six months after the date the Crown ceases to work on the matter.

List of positions

13. (1) The Public Service Commission shall maintain a current list of positions in which public servants work in a ministry and routinely work on one or more matters that might involve the private sector.

(2) The Commission shall ensure that public servants employed by the Crown in the positions described in subsection (1) are advised of the duties and restrictions imposed upon them under sections 11 and 12.

(3) Every ethics executive shall notify the Commission of changes to be made to the list with respect to those persons for whom he or she is the ethics executive.

PART II
RULES FOR FORMER PUBLIC SERVANTS WHO WORKED IN A MINISTRY

INTERPRETATION

Definition

14. In this Part,

"designated senior position" means any of the following positions:

1. The Secretary of the Cabinet.

2. Deputy minister, associate deputy minister or assistant deputy minister.

3. A position that is classified under subsection 33 (1) of the Act as SMG 2, XOFA 1, XOFA 2, ITX 2, ITX 3 or ITX 4.

Application

15. (1) This Part applies with respect to every former public servant who, immediately before he or she ceased to be a public servant, worked in a ministry.

(2) Despite subsection (1), this Part does not apply to a person who ceases be a public servant before the day on which section 57 of the Act comes into force.

PROHIBITED CONDUCT

Seeking preferential treatment, etc.

16. A former public servant shall not seek preferential treatment by, or privileged access to, public servants who work in a minister's office, a ministry or a public body.

Disclosing confidential information

17. (1) A former public servant shall not disclose confidential information obtained during the course of his or her employment by the Crown to a person or entity unless the former public servant is authorized to do so by law or by the Crown.

(2) A former public servant shall not use confidential information in a business or undertaking.

Restriction on lobbying

18. (1) This section applies to a former public servant who, immediately before ceasing to be a public servant, was employed in a designated senior position.

(2) For 12 months after ceasing to be a public servant, the former public servant shall not lobby any of the following persons on behalf of a public body or another person or entity:

1. A public servant who works in a ministry or public body in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant.

2. The minister of any ministry in which the former public servant worked at any time during the 12 months before he or she ceased to be a public servant.

3. A public servant who works in the office of a minister described in paragraph 2.

Restriction on employment, etc.

19. (1) This section applies to a former public servant who, immediately before ceasing to be a public servant, was employed in a designated senior position and who, at any time during the 12 months before he or she ceased to be employed as a public servant, in the course of his or her employment as a public servant,

(a) had substantial involvement with a public body or another person or entity; and

(b) had access to confidential information that, if it were to be disclosed to the public body, person or entity, could result in harm to the Crown or could give the public body, person or entity an unfair advantage in relation to one or more third parties.

(2) For 12 months after ceasing to be a public servant, the former public servant shall not accept employment with the public body, person or entity or serve as a member of the board of directors or other governing body of the public body, person or entity.

Restriction re certain transactions

20. (1) This section applies to a former public servant who, when he or she was a public servant working in a ministry, advised the Crown about a particular proceeding, negotiation or other transaction.

(2) The former public servant shall not advise or otherwise assist any public body or any other person or entity in connection with the particular proceeding, negotiation or other transaction until the Crown ceases to be involved in it.

(3) Despite subsection (2), the former public servant may continue to advise or otherwise assist the Crown in connection with the particular proceeding, negotiation or other transaction.

PART III
COMMENCEMENT

Commencement

21. This Regulation comes into force on the day section 57 of the Act comes into force.

4. New "At-a-Glance" brochures

This appendix includes the following new brochures:

a) Conflict of Interest Rules at a Glance

b) Political Activity Rules at a Glance

c) Role of Ethics Executives at a Glance

Ontario

Office of the Conflict of Interest Commissioner

Bureau du commissaire aux conflits d'intérêts

ABOUT THE RULES

The *Public Service of Ontario Act, 2006* (*PSOA*) sets out conflict of interest rules that establish standards of ethical conduct for public servants. Regulation 381/07 sets out the specific conflict of interest rules applicable to employees in ministries (except ministers' staff) and employees and appointees in public bodies. There are two sets of rules:

- In-service rules that apply to current public servants
- Post-service rules that apply to former public servants

These "Rules at a Glance" are for information only. For the authoritative text, please refer to the *Public Service of Ontario Act, 2006* and regulations.

THE CONFLICT OF INTEREST COMMISSIONER

The Honourable Sidney B. Linden is the Conflict of Interest Commissioner for Ontario. Justice Linden previously served as Chief Justice of the Ontario Court of Justice and has held a number of other positions in the public sector, including Police Complaints Commissioner, Information and Privacy Commissioner, Chair of Legal Aid Ontario, and most recently, Commissioner of the Ipperwash Public Inquiry.

For further information:

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Ontario

Office of the Conflict of Interest Commissioner

Bureau du commissaire aux conflits d'intérêts

Conflict of Interest Rules at a Glance

IN-SERVICE RULES

BENEFITING SELF, SPOUSE OR CHILDREN

Public servants can't use their positions for personal benefit or for the benefit of their spouses or children.

ACCEPTING GIFTS

Public servants shouldn't accept gifts from anyone who does business with or wants to do business with the Ontario government. Public servants also shouldn't accept gifts from companies or individuals if the government provides services to them. "Gifts" include anything from gift baskets to free tickets or dinners. In some cases, a public servant may accept a gift of nominal value provided that it is given as an expression of courtesy or hospitality.

DISCLOSING CONFIDENTIAL INFORMATION

Public servants are not allowed to disclose confidential information without authorization nor use confidential information for personal benefit.

GIVING PREFERENTIAL TREATMENT

Public servants should not provide any preferential treatment to individuals or groups, nor provide assistance other than that given in the ordinary course of their public service duties. Public servants must also avoid creating the appearance that they are giving preferential treatment.

IN-SERVICE RULES

HIRING FAMILY MEMBERS

Public servants can't hire their spouses, children, parents, brothers or sisters. Public servants are also subject to rules regarding supervising their family members.

ENGAGING IN BUSINESS

Public servants can't engage in business or undertakings (including sitting on boards and volunteer activities) outside their public servant roles if doing so would influence or conflict with their duties as public servants. That means, for example, not doing "outside" work on government time. And, even on their own time, public servants can't use government premises, equipment or supplies for outside activities.

PARTICIPATING IN DECISION-MAKING

In cases where public servants could benefit from a decision to be made, they must disclose that interest and they may not be allowed to participate in the decision-making process.

DECLARING FINANCIAL INTERESTS

Some public servants must disclose certain financial interest and may be prohibited from acquiring financial interests related to their duties as public servants.

POST-SERVICE RULES

SEEKING PREFERENTIAL TREATMENT

Former public servants must not seek preferential treatment from existing public servants.

DISCLOSING CONFIDENTIAL INFORMATION

Former public servants are not allowed to disclose confidential information without authorization or use confidential information for personal benefit.

SWITCHING SIDES

Former public servants who advised a ministry or public body on a proceeding, negotiation, or other transaction cannot provide advice or otherwise assist others on that matter after they cease to be public servants.

EMPLOYMENT AND LOBBYING

Former public servants who held designated senior positions are subject to employment and lobbying restrictions for a twelve-month period starting from the date they ceased to be public servants.

ABOUT THE RULES

These "Rules at a Glance" are for information only. For the authoritative text, please refer to the *Public Service of Ontario Act, 2006* and regulations.

PURPOSE OF THE POLITICAL ACTIVITY RULES

The *Public Service of Ontario Act, 2006* (*PSOA*) includes political activity rules intended to balance the neutrality of the public service with a public servant's ability to engage in political activity. The political activity rules that apply to public servants in public bodies and ministries, including both employees and appointees, are set out under Part V of the *PSOA*. Political activity rules apply to public servants at all times, not only during election periods, and public servants should be mindful of the rules whenever they take part in political activity.

WHAT "POLITICAL ACTIVITY" INCLUDES

Under the *PSOA*, public servants participate in political activity when they engage in any of the following activities:

- Do anything in support of or in opposition to a political party (federal or provincial) or a candidate (federal, provincial or municipal)
- Become or seek to become a candidate in a federal, provincial or municipal election
- Make public comments on any matter dealt with in the position or policy of a political party (federal or provincial) or candidate (federal, provincial or municipal) if comments are outside the scope of the public servant's duties and the matter is directly related to his/her duties

Ontario

Office of the Conflict of Interest Commissioner

Bureau du commissaire aux conflits d'intérêts

THE CONFLICT OF INTEREST COMMISSIONER

The Honourable Sidney B. Linden is the Conflict of Interest Commissioner for Ontario. Justice Linden previously served as Chief Justice of the Ontario Court of Justice and has held a number of other positions in the public sector, including Police Complaints Commissioner, Information and Privacy Commissioner, Chair of Legal Aid Ontario, and most recently, Commissioner of the Ipperwash Public Inquiry.

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Political Activity Rules at a Glance

TYPES OF RESTRICTIONS

The type of restrictions imposed on public servants depends on the public servant's position. Some prohibitions apply to all public servants. Other restrictions apply to most public servants except those public servants identified as specially restricted. Finally, some rules apply only to specially restricted public servants. A separate set of rules apply to ministers' office staff (for information, visit the Integrity Commissioner's website: http://oico.on.ca).

Specially restricted public servants include:

- The Conflict of Interest Commissioner
- The Secretary of the Cabinet
- Every deputy minister or associate deputy minister in a ministry
- Every assistant deputy minister in a ministry
- Every director in a ministry
- Every deputy director of a legal services branch of a ministry
- Every crown attorney
- Every commissioned officer and detachment commander in the Ontario Provincial Police
- All appointees to tribunals listed in Ontario Regulation 377/07

ALL PUBLIC SERVANTS

WHAT IS PROHIBITED?

1. Political activity in the workplace
2. Political activity while wearing a uniform associated with the public service of Ontario
3. Using government premises, equipment or supplies for political activity purposes
4. Associating public service positions with political activity (except in specified circumstances)

MOST PUBLIC SERVANTS (except specially restricted public servants and ministers' staff)

WHAT IS PERMITTED?

Most public servants may engage in any political activity that is not prohibited (see above) or restricted. Public servants who wish to engage in restricted activity must be on a leave of absence while they do so.

WHAT IS RESTRICTED?

Restricted activities are set out in section 79(1) of the *PSOA* and include the following:

1. Becoming or seeking to become a candidate in a federal or provincial election during an election period (if elected as an MP or MPP, the public servant's employment will be terminated; if elected in a municipal election, the public servant's employment may be terminated)
2. Soliciting funds for a political party or candidate (applies to public servants who supervise others or deal directly with members of the public)
3. Make public comments on any matter dealt with in the position or policy of a political party (federal or provincial) or candidate (federal, provincial or municipal) if comments are outside the scope of the public servant's duties and the matter is directly related to his/her duties
4. Political activity that could interfere with the public servant's duties
5. Political activity that could conflict with the interests of the Crown (in the case of a ministry employee) or a public body (in the case of a public body employee)

SPECIALLY RESTRICTED PUBLIC SERVANTS

WHAT IS PERMITTED?

Specially restricted public servants may only engage in political activity that is specifically permitted. All other political activity is prohibited for most specially restricted public servants.

WHAT IS SPECIFICALLY PERMITTED?

Specifically permitted political activities are set out in sections 89 and 90 of the PSOA.

All specially restricted public servants may:

1. Vote
2. Attend an all-candidates meeting
3. Become, seek to become, or campaign for a candidate in a municipal election (but only if the public servant's ethics executive has determined that doing so would not interfere with the interests of the Crown or public body). If elected the public servant's employment may be terminated)*

All specially restricted public servants, except deputy ministers, the Conflict of Interest Commissioner and the Secretary of Cabinet may also:

1. Contribute money to a political party or candidate
2. Hold membership in a political party

Only part-time specially restricted appointees may seek the Conflict of Interest Commissioner's authorization to engage in activities not otherwise permitted.*

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* Conditions, including requiring a leave of absence, may be imposed

RESOURCES FOR ETHICS EXECUTIVES

The following tools are available to assist ethics executives in applying and interpreting the *Public Service of Ontario Act, 2006* and its regulations to conflict of interest and political activity matters:

- Rules at a Glance
- Fact Sheets
- Political Activity Roadmaps
- Annual Reports
- Summaries
- Frequently Asked Questions
- Forms
- Brochures

For more information on COIC resources visit our website at:
coicommissioner@ontario.ca

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Role of Ethics Executives at a Glance

ETHICS EXECUTIVE ROLE

Ethics executives are individuals designated to be responsible for promoting ethical conduct within their organizations. Ethics executives are the first point of contact for employees and appointees requiring advice or decisions on such matters.

Ethics executives are responsible for:

- Ensuring that public servants are familiar with the conflict of interest/ political activity rules;
- Providing advice to public servants on the application of the conflict of interest / political activity rules;
- Conducting inquiries where public servants may have contravened a rule;
- Making determinations on conflict of interest and political activity issues and providing directions where an actual or potential conflict of interest is found;
- Authorizing requests to engage in certain political activities;
- Making a determination on the need to terminate employment or appointment if a public servant is elected to municipal office.

The following chart sets out each public servant's ethics executive:

LIST OF ETHICS EXECUTIVES

Type of Public Servant	Ethics Executive
ministry employees	deputy minister
ministers' staff	Integrity Commissioner
deputy ministers	Secretary of Cabinet
Secretary of the Cabinet	Conflict of Interest Commissioner
former ministry employees	Public Service Commission
former deputy ministers	Conflict of Interest Commissioner
former cabinet secretaries	Conflict of Interest Commissioner
chairs of public bodies	Conflict of Interest Commissioner
public body appointees	chair of public body
public body employees	chair of public body or the person listed in O. Reg. 147/10
persons listed in O. Reg. 147/10	Conflict of Interest Commissioner
former public body employees and appointees	Conflict of Interest Commissioner
Conflict of Interest Commissioner	Integrity Commissioner

ROLE OF THE COMMISSIONER

ACTING AS ETHICS EXECUTIVE

The commissioner is the ethics executive for specified current and former public servants, including chairs of public bodies and the Secretary of Cabinet. In this capacity, the commissioner is responsible for providing these individuals with advice or direction on conflict of interest and political activity matters that may have an impact on fulfilling their duties as public servants.

ASSISTING OTHER ETHICS EXECUTIVES, OFFICIALS OR OFFICES

Ethics executives may request the commissioner's advice and guidance, as may other officials of Ontario government offices. In assisting ethics executives, the commissioner seeks to support senior officials in carrying out their oversight responsibilities as ethics executives.

Ethics executives may refer a matter to the commissioner for a determination. If the commissioner accepts the referral, the commissioner assumes the decision-making function. When the commissioner provides advice, the ethics executive retains the decision-making function.

5. *PSOA* roles and responsibilities diagram

The diagram "Roles and Responsibilities for Conflict of Interest and Political Activity Matters," on the next page, shows the various roles under the *PSOA* within Ontario's ethical framework.

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Office of the Conflict of Interest Commissioner
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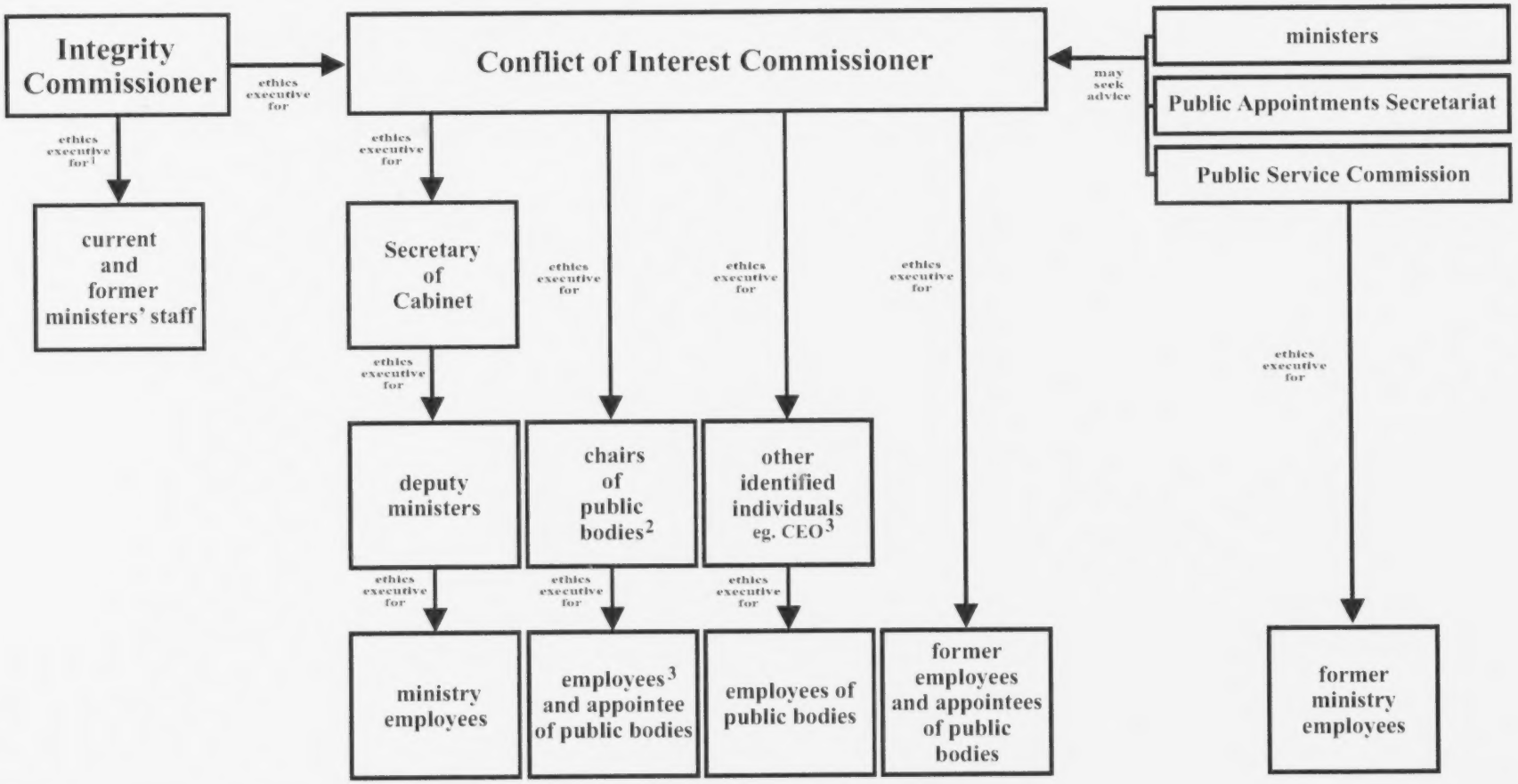
Public Service of Ontario Act, 2006

Roles and Responsibilities for Conflict of Interest and Political Activity Matters



[1] Ethics executives provide advice and make decisions about conflict of interest and political activity matters.

[2] Public bodies are identified in O. Regulation 146/10.

[3] Chairs are employees' ethics executive where there is no individual identified in O. Regulation 147/10.

6. Consolidated procedure summary

The following two-page summary fact sheet describes procedures regarding conflict of interest and political activity matters.

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Office of the Conflict of Interest Commissioner
Bureau du commissaire aux conflits d'intérêts

CONFLICT OF INTEREST MATTERS

As set out below under the *Public Service of Ontario Act, 2006* (the *PSOA*), the commissioner may offer the following types of assistance to address conflict of interest matters:

Type of Assistance‡	Who may seek assistance	Type of information to include in request for assistance
(1) Conflict of interest advice*	• Public servant or former public servant for whom the commissioner is ethics executive • Ethics executive of any public servant • Public Service Commission	• Information explaining the nature of the conflict of interest issue
(2) Conflict of interest determination*	• Public servant or former public servant for whom the commissioner is ethics executive • Supervisor of a public servant for whom the commissioner is ethics executive • Ethics executive of any public servant	• Information explaining the nature of the conflict of interest issue • If request is made by an ethics executive, information about why the ethics executive is requesting to refer the matter rather than making the determination
(3) Appointment advice	• Public Service Commission or its delegate • Minister • Director of Public Appointments Secretariat	• Description of the role and responsibility of the potential appointee/employee • Description of the entity to which the potential appointee/employee may be appointed • Description of conflict of interest rules or frameworks in place in the organization, if any • Explanation of the possible conflict of interest issue
(4) Conflict of interest advisor for a consultant, contractor and secondees	• Public Service Commission • Ethics executive	• Description of the role and responsibility of the consultant, contractor, or secondee • Description of conflict of interest rules or frameworks in place at the organization, if any • Explanation of the potential conflict of interest • Description of advice obtained, if any, from ministry or officials regarding the potential conflict • Persons who should be advised of any advice given
(5) Conflict of interest rules approval	Chair of a public body	• Proposed public body rules • Completed Conflict of Interest Rules Assessment Form
(6) Financial declarations advice	Public Service Commission Identified public servants	• Completed unsigned financial declaration form • A description of the matter(s) on which the public servant is or will be working that might involve the private sector • A list of the private sector entities involved in these matters

‡ A more detailed fact sheet for each type of assistance may be found at www.coicommissioner.gov.on.ca

* Advice is designed to assist a decision-maker in identifying potential conflict of interest concerns and strategies to mitigate these concerns whereas a determination is a binding decision made by the commissioner on behalf of the ethics executive about the application of the conflict of interest rules.

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POLITICAL ACTIVITY MATTERS

As set out below under the *Public Service of Ontario Act, 2006* (the *PSOA*), the commissioner can offer the following types of assistance to address political activity matters:

Type of Assistance‡	Who may seek assistance	Type of information to include in request for assistance
(1) Political Activity Advice*	• Public servant for whom the commissioner is ethics executive • Ethics executive of any public servant	• Information explaining the nature of the political activity in which the public servant wishes to engage
(2) Political Activity Determination*	• Public servant for whom the commissioner is ethics executive and who has been or is seeking election to a municipal office • The ethics executive of a public servant who has been or is seeking election to municipal office	• Information explaining the nature of the political activity in which the public servant wishes to engage • If request is made by an ethics executive, information about why the ethics executive is requesting to refer the matter rather than making the determination
(3) Political Activity Authorization	• Public servant for whom the commissioner is ethics executive and who is not specially-restricted, may request a leave of absence to engage in political activity • Specially-restricted public servant, for whom the commissioner is ethics executive, may request authorization to (1) be or seek to be a candidate in a municipal election or (2) campaign on behalf of a candidate in a municipal election • Part-time specially restricted government appointee to a public body may request authorization to engage in political activity that is otherwise not permitted	• Information explaining the nature of the political activity in which the public servant wishes to engage • Description of the scope of discretion exercised by the public servant in his or her work • Description of the visibility of the public servant's position
(4) Election to Office Determination	• Public servant for whom the commissioner is ethics executive and who has been or is seeking election to a municipal office • Ethics executive of a public servant who has been or is seeking election to municipal office	• Information about the public servant's duties including the possible impact of election to office on those duties and measures to minimize the impact • If request is made by an ethics executive, information about why the ethics executive is requesting to refer the matter rather than making the determination

‡ A more detailed fact sheet for each type of assistance may be found at www.coicommissioner.gov.on.ca

* Advice is designed to assist a decision-maker in identifying potential conflict of interest concerns and strategies to mitigate these concerns whereas a determination is a binding decision made by the commissioner on behalf of the ethics executive about the application of the conflict of interest rules.

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7. Post-service information sheet

The following two-page information sheet summarizes the "Post-Service Conflict of Interest Rules."

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POST SERVICE CONFLICT OF INTEREST RULES

All former public servants are subject to restrictions under the *Public Service of Ontario Act, 2006* (*Act*). The conflict of interest rules applicable to former public servants are set out in Ontario Regulation 381/07 and 382/07 under the *Act*. There may also be additional rules for public servants in some public bodies set out in the public body's conflict of interest rules posted on the Commissioner's website.

Former public servants have an ethics executive to provide advice and/or make decisions about the application of conflict of interest rules to their post-service activities. For advice about specific activities please contact your ethics executive.

Type of former Public Servant*	Ethics Executive
Former ministry employee	Public Service Commission
Former minister's office employee	Integrity Commissioner
Former public body employee/appointee	Conflict of Interest Commissioner
Former deputy minister	Conflict of Interest Commissioner
Former Secretary of the Cabinet	Conflict of Interest Commissioner

*Current public servants should discuss post-service activity with the ethics executive listed

The Government of Ontario may choose not to do business with a person or entity that employs or uses the services of a former public servant in a manner that contravenes the post-service conflict of interest rules.

RULES FOR ALL FORMER PUBLIC SERVANTS

PREFERENTIAL TREATMENT

You must not seek preferential treatment by, or privileged access to, any public servant in any minister's office, ministry or public body. This restriction is not time limited.

CONFIDENTIAL INFORMATION

As a public servant, you may have had access to information that is not available to the public and that, if disclosed, could result in harm to the Crown or could give the person to whom it is disclosed an advantage. You are prohibited from disclosing or using such information unless you are specifically authorized to do so. This restriction is not time limited.

SWITCHING SIDES

You are prohibited from advising or otherwise assisting a public body, person, or other entity, in connection with any particular proceeding, negotiation or other transaction about which you advised the Crown. Generally these are matters with an identifiable party with interests that are adverse, or potentially adverse, to the interests of the Crown. This restriction remains in effect until the Crown stops being involved with the matter.

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RULES FOR FORMER PUBLIC SERVANTS IN SENIOR DESIGNATED POSITIONS

Former public servants who were in senior designated positions are also subject to employment and lobbying restrictions for a twelve month period from the date they cease to be a public servant. You cease to be a public servant when your relationship with the Crown is terminated. If you are uncertain when you will cease/have ceased to be a public servant, please contact your ethics executive. A senior designated position is:

1. any position classified as SMG2, XOFA1, XOFA2, ITX2, ITX3 OR ITX4; or
2. Deputy Minister, Associate Deputy Minister or Assistant Deputy Minister;
3. Secretary of Cabinet; and
4. any position identified as such in the Memorandum of Understanding between a public body and its responsible ministry.

EMPLOYMENT OR GOVERNING POSITION

As a former public servants who was in a senior designated position you are prohibited from accepting employment or serving as member of the board of directors or other governing body of any public body, person or entity if:

1. you had substantial involvement with that public body, person or entity; and
2. had access to confidential information which if disclosed could result in harm to the Crown or could give the public body, person or entity an unfair advantage.

LOBBYING

As a former public servant who was in a senior designated position you are restricted from lobbying any of the following persons on behalf of a public body or another person or entity:

1. any public servant who works in a ministry or public body in which you worked at any time during the 12 months before you ceased to be a public servant;
2. the minister of any ministry or minister's office in which you worked at any time during the 12 months before you ceased to be a public servant; and
3. any public servant who works in the office of the minister of any ministry in which you worked at any time during the 12 months before you ceased to be a public servant.

Lobbying has the same meaning as the definition of "lobby" in the *Lobbyists Registration Act, 1998* and includes activities for which an individual may not be required to register. Generally, lobbying includes communicating with public office holders in an attempt to influence the following: legislative proposals, legislation, regulations, policies or programs of the government, privatization matters or awarding grants, contributions or other financial benefits. It can also mean communicating with public office holders in an attempt to award a contract on behalf of the Crown or arranging meetings between public office holders and any other person.

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